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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,786	11/21/2003	Edward Paul Carlin	9431	2939

27752 7590 11/15/2005

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/719,786	Applicant(s) CARLIN, EDWARD PAUL	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7, 9-11, 13, 14, 16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 9-11, 13, 14 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 3-7 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowability Withdrawn

The indicated allowability of claim 13 is withdrawn in view of the newly discovered reference(s) to Glassman (US 4,335,720). Rejections based on the newly cited reference(s) follow.

Drawings

The drawings in this application are acceptable for examination purposes only. Upon allowance, new formal drawings will be required.

Claim Objections

Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 2 recites "said first surface area being different than said second surface area." This limitation is recited in lines 7 and 8 of parent claim 13.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 9-11, 13, 14, 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Glassman (US 4,335,720).

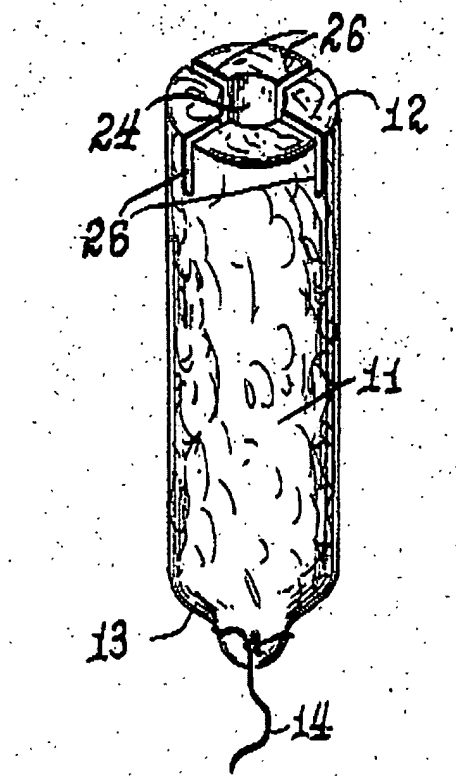
Regarding claims 2 and 13, Glassman teaches a tampon (11) for feminine hygiene comprising an insertion end (12), a withdrawal end (13), a length, a longitudinal axis, a radial axis, and an outer surface;

said tampon (11) being comprised of compressed fibrous material (col. 2, lines 25-49);

wherein a measured portion of said outer surface of said insertion end (12) comprises a first surface area and a measured portion of said outer surface of said withdrawal end (13) comprises a second surface area, said first surface area being different than said second surface area, wherein at least a portion of said first surface area comprises grooves (26), wherein said grooves (26) are selected from the group consisting of longitudinal grooves, horizontal grooves and mixtures thereof (see fig. 1, below).

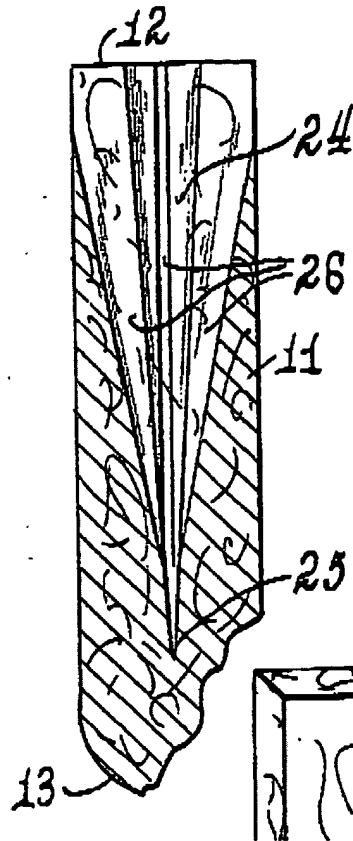
Glassman is silent as to the specific length of the grooves (26).

Mere changes in relative size or proportion are not sufficient to patentably distinguish a claimed invention from the prior art. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.



Regarding claims 9-11 and 14, Glassman teaches grooves (26) arranged in a radial pattern of evenly spaced longitudinal straight lines (fig. 1).

Regarding claims 18 and 19, Glassman teaches that at least at the withdrawal end (13) that the compressed fibrous material is of essentially uniform density (col. 2, lines 25-49)(see fig. 2, below).



Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Glassman as applied to claims 2, 9-11, 13, 14, 18 and 19 above, in view of Child *et al.* (US 6,283,952 B1).

Glassman does not disclose a thumb indent at the withdrawal end of a tampon.

Child *et al.* teach a tampon (10) having an indent (23) at its withdrawal end (13)(fig. 1).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the indent of Child *et al.* to the tampon of Glassman in order to provide a means of facilitating insertion of the device into a patient with a thumb or finger.

Allowable Subject Matter

Claims 3-7 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 2, 9-11, 13, 14 18 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
10 November 2005

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

